

## COOK SHEEP COMPANY TRUST

IBLA 82-1315

Decided February 3, 1983

Appeal from decision of Administrative Law Judge Michael L. Morehouse affirming the decision of the District Manager, Rock Springs District, Bureau of Land Management, requiring marking and counting of appellant's domestic livestock. Wyoming 4-81-1.

Affirmed.

### 1. Grazing Permits and Licenses: Generally

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d), BLM has discretionary authority to require marking and counting to control unauthorized grazing use or to promote the orderly administration of public lands. A decision requiring that domestic livestock be marked and counted will be sustained where the record establishes a rational basis therefor.

APPEARANCES: David S. Cook, Esq., Bountiful, Utah, for appellant;  
Marla E. Mansfield, Esq., Office of the Regional Solicitor, Department of the Interior, for Bureau of Land Management.

### OPINION BY ADMINISTRATIVE JUDGE IRWIN

Cook Sheep Company Trust has appealed the August 2, 1982, decision of Administrative Law Judge Michael L. Morehouse affirming the decision of the District Manager, Rock Springs District, Bureau of Land Management (BLM), dated January 22, 1981, requiring that all cattle be paint-branded before grazing on the Henry's Fork allotment in Wyoming and that all sheep and horses be counted onto and off the allotment prior to grazing.

Following issuance of the District Manager's decision, appellant timely appealed pursuant to 43 CFR 4.470. A hearing was held before Judge Morehouse in Green River, Wyoming, on April 13, 1982. Ray Cook, Trustee, represented appellant at the hearing. Marla E. Mansfield of the Denver Regional Solicitor's Office appeared on behalf of the Bureau of Land Management. Testimony was heard from the Salt Wells Area Resource Manager and two BLM range conservationists in the Rock Springs District.

[1] We have thoroughly reviewed the record of this case and the arguments advanced by appellant. Judge Morehouse's decision accurately summarizes the testimony of the Government witnesses and the views of appellant. We agree with the Judge's findings and conclusions and adopt his decision as part of this decision. A copy of the Judge's decision is attached as Appendix A.

In its statement of reasons to this Board, appellant makes the following arguments:

1. Paint-branding and counting off and on requirements are arbitrary and capricious under the circumstances.
2. No evidence was submitted at the hearing to show that the Henry's Fork Allotment is suffering from destruction or unnecessary injury by reason of grazing or overgrazing or that special marking and counting off and on to the allotment could or would have any effect on any overgrazing.
3. Marking and counting will not stabilize the livestock industry.
4. Marking and counting on and off the allotment will not aid the orderly use and rehabilitation of public lands for livestock grazing.
5. Marking and counting will not control unauthorized grazing use.

These arguments are similar to those presented to Judge Morehouse prior to his August 2, 1982, decision and to which he responded in his decision.

Implementation of the Taylor Grazing Act of 1934, as amended, 43 U.S.C. §§ 315, 315a-315r (1976) is committed to the discretion of the Secretary of the Interior. Andrew H. L. Anderson, 32 IBLA 123 (1977). The applicable regulation, 43 CFR 4120.4(d), gives authorized BLM officials the discretion to require "counting and/or additional or special marking \* \* \* of the authorized livestock in order to control unauthorized grazing use or in order to otherwise promote the orderly administration of the public lands." A decision made in the exercise of this discretion supported by a rational basis is not arbitrary or capricious and will be affirmed. C-Punch Corp., 67 IBLA 293 (1982). We agree with Judge Morehouse that BLM has shown that the marking and counting at issue here are reasonable tools for the proper management of the Henry's Fork allotment and that appellant failed to establish otherwise.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Morehouse is affirmed.

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Will A. Irwin  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

August 2, 1982

COOK SHEEP COMPANY TRUST,	:	WYOMING 4-81-1
	:	
Appellant	:	Appeal from District
	:	Manager's Decision dated
v.	:	January 22, 1981, Rock
	:	Springs District
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	

### DECISION

Appearances: Ray Cook, Trustee, Pro se, for Appellant

Marla E. Mansfield, Esq., Office of the Solicitor, Denver,  
Colorado, for Respondent

Before: Administrative Law Judge Morehouse

This is a proceeding under the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315, et seq., and the grazing regulations in 43 CFR Subchapter D. The proceeding was initiated under 43 CFR 4.470, when an appeal was taken from the above decision.

On January 22, 1981, the District Manager, Rock Springs District, issued his decision requiring that all cattle be paint-branded before grazing on the Henry's Fork allotment and all sheep and horses be counted on and off the allotment prior to use. A timely appeal was filed by Mr. Cook, and a hearing was held on April 13, 1982, at Green River, Wyoming.

Henry's Fork allotment encompasses approximately 340,000 acres and is fenced into 6 pastures (ex. G-1). The fences are in poor repair in some areas and are in the process of being fixed. Twenty-five operators have licensed use for over 3,000 head of cattle in the allotment together with fewer horses and sheep. On October 22, 1980, the District Manager issued a proposed decision requiring that all cattle on the allotment be ear-tagged. Fifteen operators protested the proposed decision on the basis that ear-tagging would cause substantial hardship and

complication in their management programs. Following a meeting of the affected parties, the District Manager issued his final decision in which the ear-tagging requirement was modified to paint or dye branding, an alternative which had been suggested at the meeting by the operators. Mr. Cook was the only Appellant from this decision.

Mr. Bob Bierer, Bureau of Land Management Manager, for the area in question, testified that fences were constructed in the allotment in the mid-60's and are not in the best of repair. There are over 3,000 cattle on the allotment at the same time, the country is broken and rough, and the paint marking requirement will help Bureau of Land Management personnel in the range management of the allotment. The purpose of the paint-branding is to be able to identify cattle as being in the proper pasture. No attempt is made to count specific numbers.

Mr. Jim Perkins, Bureau of Land Management, Lead Range Conservationist, testified that, in his opinion, the allotment is in fair condition with a static trend. There have been some trespass problems between pastures within the allotment, but it is hoped that this situation will improve as the fences are upgraded. He described a reasonably complicated licensing system among the 25 operators using the allotment and stated that paint-branding makes it infinitely easier to tell if the proper cows are in a given pasture. He explained that some cows can have as many as four or five brands due to sales between operators and to ascertain whether cattle are properly within a given pasture by brand alone would be extremely difficult.

Mr. Michael Finn, Bureau of Land Management, Range Conservationist, testified that the Bureau of Land Management supplies paint and labor to brand the cows and does its best to be flexible in timing this activity to the time when the operator is branding and sorting his cattle. He was involved in paint-branding approximately 2,850 cows during the past year, and it is his opinion that the paint branding causes no abnormal stress and definitely helps in the management of the allotment.

Mr. Cook grazes 87 head in pastures C and D between May and September. It is his opinion that the paint-branding will cause unnecessary expense, will not create any benefits, both the counting on and off and the paint-branding is cumbersome and a burden on the rancher, and these requirements will not prevent unauthorized use. He believes that increased management and regulation of the rancher by the Bureau of Land Management is adversely affecting the livestock industry and that the paint-branding and counting on and off required in the District

Manager's decision is another example of increased government meddling.

There is no question that over the years since enactment of the Taylor Grazing Act, the Government has been more active in managing public lands. This activity may well have increased since enactment of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701, et seq. Nevertheless, these policies as set out in the statutes of Congress must be implemented and the Bureau of Land Management has this responsibility. The only issue before me is whether, under the present circumstances, the decision of the District Manager is reasonable or whether it is arbitrary and capricious. United States v. Maher, 5 IBLA 209 (1972). The burden is on appellant to show by a preponderance of the evidence that the decision complained of is arbitrary and unreasonable. This, the appellant, has failed to do. In fact, the weight of the evidence shows that the District Manager made every effort to accommodate the objections of the operators to the ear-tagging requirement in the proposed decision, and that the paint-branding and counting on and off requirements are reasonable tools to be used in the management of the allotment.

Accordingly, the decision of the District Manager is affirmed.

Michael L. Morehouse  
Administrative Law Judge

#### APPEAL INFORMATION

The appellant, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulations in 43 CFR Part 4 (See enclosed information pertaining to appeals procedures).

If an appeal is taken, the adverse party, the Bureau of Land Management, must be served by service upon its attorney at the address listed for distribution.

In addition, the Regional Solicitor must be served at the following address:

Regional Solicitor  
U. S. Department of the Interior  
Building 67, Room 1480  
Denver Federal Center  
Denver, Colorado 80225

Enclosure: Information Pertaining to Appeals Procedures

Distribution:

By Certified Mail

David S. Cook, Esq.  
85 West 400 North  
Bountiful, Utah 84101

Marla E. Mansfield  
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U.S. Department of the Interior  
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